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Attorneys for Plaintiff and all aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

RITCHIE ROBINSON, an individual, on
behalf of the State of California, as a private
attorney general,

PLAINTIFF,

v.

S T MOLL, INC. DBA INTEGRITY TIRE;
BIG BRAND TIRE COMPANY, INC.; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. CIVSB2129140

[Case Assigned for All Purposes to Hon.
Judge David Cohn in Dept. S-26]

**DECLARATION OF KELSEY M.
SZAMET IN SUPPORT OF
PLAINTIFF'S MOTION FOR
APPROVAL OF REPRESENTATIVE
ACTION SETTLEMENT**

*[Filed concurrently with Motion for
Approval of Representative Action
Settlement; Declaration of Ritchie Robinson;
[Proposed] Order and Judgment]*

Date: January 4, 2023

Time: 1:30p.m.

Dept.: S-26

Complaint Filed: October 12, 2021

Trial Date: None Set

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1. I am an attorney licensed to practice before all of the courts of the State of California. I am partner in the law firm of Kingsley & Kingsley, APC and one of the attorneys of record for Plaintiff Ritchie Robinson in the above-entitled action. I have personal knowledge of the facts set forth herein, and if called upon as a witness, I could and would testify competently thereto.

3. I graduated cum laude from the University of California, San Diego in 2004 with a degree in Human Development. I graduated from the University of California, Los Angeles School of Law in 2008. I am admitted to practice before the following Courts: United States Supreme Court; United States District Court, Northern, Eastern, Southern and Central of California; all California State Courts.

LITIGATION BACKGROUND

5. Plaintiff is informed and believes that Defendants are joint employers of Plaintiff and other aggrieved employees.

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7. On October 8, 2021 filed an Amended PAGA Letter to the LWDA and mailed by certified mail, return receipt requested, to Defendants S T Moll and Big Brand.

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Defendants Chris Moll, Steve Moll, and Tina Moll.

9. After the exhaustion period, on October 12, 2021, Plaintiff filed a representative action under the California Labor Code's PAGA for penalties for violations of Labor Code sections 201, 202, 203, 226.7, 510, 512, 1194, 1194.2, 1199, and 2802. (Hereafter, the "Action".)

10. On December 21, 2021, Plaintiff filed a First Amended Complaint ("FAC") alleging the same cause of action in his original complaint, including an additional violation under PAGA for violation Labor Code §558.1 and adding Defendants Big Brand, Chris Moll, Steve Moll, and Tina Moll as named Defendants to the Action.

THE DISCOVERY PROCESS

11. After the matter was at issue, the Parties engaged in informal fact discovery and exchanged pertinent information to understand the nature of the allegations and the scope of potential liability.

12. Plaintiff requested relevant information such as the number of pay periods and aggrieved employees at issue and any wage relevant policies.

13. Through the exchange of information and attendant discussions between the Parties, Plaintiff learned that the number of aggrieved employees is approximately 225 (including Plaintiff) and there are approximately 12,464 Eligible Work Weeks during the Release Period.

14. The Release Period is from August 8, 2020 to October 18, 2021.

15. Thereafter, the Parties engaged in arms-length settlement discussions, which included a full day mediation with esteemed mediator Barry Winograd, Esq. on June 2, 2022. With the assistance of the mediator, the Parties reached a settlement in principle.

16. Thereafter, the Parties formalized the Settlement Agreement.

17. If the statutory penalty of \$100 for an initial violation and \$200 for each subsequent violation applies, Plaintiff asserts that the maximum potential exposure for the PAGA claims for aggrieved employees is \$1,246,400 (approximately 12,464 work weeks at issue $\times$ \$100 = \$1,246,400).

1 18. It should be noted that Defendant pays weekly so its pay periods are also weekly.
2 This is important to the exposure analysis because PAGA penalties are tied to pay periods so if
3 Defendants happened to have bi-weekly pay periods instead, the maximum potential exposure
4 would be cut approximately in half to \$623,200 (6,232 x \$100 = \$623,200).

5 19. Although Defendants deny that they violated any pertinent law, they recognized
6 the risks and attendant costs of litigation, and the Parties were able to reach a tentative settlement
7 subject to finalization of a formal Settlement Agreement and the approval of the Court. The
8 Parties negotiated the terms and conditions of the Settlement and now present the agreed-upon
9 Settlement to the Court for Approval.

10 **SETTLEMENT**

11 20. Defendants will pay the total sum of \$400,000.00 in full and final settlement of
12 the PAGA claim alleged.

13 21. For settlement purposes, the “Aggrieved Employees” are defined as: “All persons
14 who are employed or have been employed as an hourly employee by S T Moll, Inc. dba Integrity
15 Tire, in the State of California who worked at any point from August 8, 2020 to October 18,
16 2021.”

17 **RISKS AND EVALUATION OF THE SETTLEMENT**

18 22. To help the Court evaluate the fairness of the Settlement, a discussion of the risk
19 evaluation and discount taken follows.

20 23. PAGA Counsel had to consider the arguments and defenses asserted by Defense
21 Counsel.

22 24. PAGA Counsel also had to assess the risks of moving forward to trial and what
23 this Court would do in awarding penalties were Plaintiff to prevail at trial.

24 25. First, PAGA Counsel had to consider Defendants’ financial status and its ability
25 to pay any sizeable judgment against it.

26 26. Second, Defendants contend that until the Lawsuit was filed, no employees
27 complained about any alleged violation of Labor Code §§510, 1194, 1194.2, 1199, and 2802.
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1 While Plaintiff maintains that violations under Labor Code §§510, 1194, 1194.2, 1199, and 2802
2 are not curable as this is a specifically defined term of art in the PAGA statute, Plaintiff believed
3 that Defendants may persuasively argue that the Court should exercise its discretion to
4 significantly reduce any penalties under PAGA because Defendants' contend changes were made
5 to address any alleged deficiencies at its facilities

6 27. In addition, Defendant vigorously contested liability.

7 28. Through the exchange of informal discovery and extensive meet and confer
8 efforts of the Parties', Plaintiff learned that Defendant maintained that it had strong defenses as
9 to liability on the claims at issue.

10 29. As to the wages/overtime claim, Plaintiff alleges he was required to work off the
11 clock before or after shifts, but acknowledges that this can be a difficult claim to prove because
12 there are no time records to substantiate or evaluate the claim.

13 30. Moreover, Defendant would argue that if there was any issue, it was unique to the
14 Plaintiff and this would necessitate speaking to each and every Aggrieved Employee about their
15 experiences and to determine if they ever performed any off the clock work as alleged.

16 31. As to the meal and rest break claims, Defendant argued that it maintained a valid
17 written policy and that all meal and rest periods were provided in compliance with the law.

18 32. Defendant argued that if any meal or rest periods were missed, it would
19 necessitate individual inquiries as to each person on each day to determine if the meal/rest period
20 was actually "provided" but the person chose not to take it.

21 33. As to the Section 2802 claim, Defendant argued that it provided all necessary
22 tools and if Plaintiff chose to bring his own, that it could not be liable for that choice as the
23 necessary tools were made available.

24 34. The same risk analysis of Defendant's liability arguments would apply to the
25 derivative claims.

26 35. PAGA Counsel anticipated that, at trial, Counsel for Defendants could make
27 potentially persuasive arguments that: (1) all PAGA Members were properly paid in accordance
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1 with Defendants' lawful policies and practices, and that PAGA Members were not required to
2 work off the clock; (2) all PAGA Members were provided with meal and rest break areas in
3 compliance with California law; (3) until this Lawsuit was filed, no employees had complained
4 about any alleged failure to reimburse the cost of using any cell phones, tools, and vehicles; and
5 (4) none of Defendants' employees suffered any harm from or actual damage as a result of the
6 conduct that forms the basis for Plaintiff's allegations. All of which, Counsel for Defendants
7 would argue, should mitigate in favor of significantly reducing any PAGA penalties. While
8 Plaintiff disagreed that this analysis is legally correct or persuasive, PAGA Counsel had to
9 consider the foregoing facts and arguments and how they might impact any judgement ultimately
10 awarded to Aggrieved Employees if the Court were persuaded by them.

11 36. For these reasons, and in light of the risks posed by Defendants' arguments and
12 the potential risk, PAGA Counsel believes that the proposed Settlement is fair and reasonable.

13 37. Based on this analysis, Plaintiff used \$100 to evaluate the maximum potential
14 penalty recovery in this matter.

15 ATTORNEY COMPETENCE

16 38. Kingsley & Kingsley is very experienced in prosecuting employment litigation,
17 and since 2000 we have focused our practice on complex wage, hour, and working condition
18 violations. My firm is extremely well-versed in class and representative action litigation and has
19 diligently and aggressively pursued this action. Kingsley & Kingsley currently serves as class
20 counsel for dozens of pending class action lawsuits in Northern, Central, and Southern
21 California. Below is a small but representative sampling of wage and hour class cases handled
22 by my firm:

23 a. *Goodman v. Crystal Ventures, Inc.* (No. BC245561, L.A. Super. Ct.) In January
24 2002, Hon. Anthony Mohr granted final approval of settlement in the gross
25 amount of \$255,000 and the court approved the attorneys' fee request of 33 1/3%.

26 b. *Daniel v. Network Management Corp.* (No. BC274004, L.A. Super. Ct.) In
27 September 2003, the court granted final approval of Settlement in the gross
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amount of \$475,000 and the court approved the attorneys' fee request of 30%.

c. *Johnston v. The Cheesecake Factory* (No. BC316180, L.A. Super. Ct.) In December 2005, Honorable Rita Miller granted final approval of Settlement in the gross amount of \$4,000,000 and the court granted attorneys' fees request of 30%.

d. *Tumino v. HOB Entertainment* (No. BC327962, L.A. Super. Ct.) In May 2006, the Honorable Conrad R. Aragon granted final approval of Settlement in the gross amount of \$1,000,000 and the court granted attorneys' fees request of 30%.

e. *Ryan v. Hilton Hotels Corporation*, (No. BC364260, L.A. Super. Ct.) In March 2008, the Honorable Mary Thornton House granted final approval of Settlement in the gross amount of \$1,675,000.00 and the court granted attorneys' fees request of 33 1/3%.

f. *Gerritson v. Styles For Less, Inc.*, (No. BC402921, L.A. Super. Ct.) In September 2010, the Hon. Kenneth R. Freeman granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys' fees request of 33.3%.

g. *Lewis v. Collabrus, Inc., et al.*, (No. 109CV-142927, Santa Clara Super. Ct.) In March 2012, the Honorable James P. Kleinberg granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys' fees request of 33.3%.

h. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (No. BC402739, L.A. Super. Ct.) In June 2013, the Honorable Lee Smally Edmund granted final approval of Settlement in the gross amount of \$4,700,000.00, and the court granted attorneys' fees request of 38%.

i. *Anderson v. Total Renal Care, Inc.*, (No. BC388335, L.A. Super. Ct.) In January 2014, the Honorable William F. Highberger granted final approval of Settlement in the gross amount of \$1,500,000.00 and the court granted attorneys' fees request of 33.33%.

j. *Westbrook v. International Surfacing Systems*, (No. RG10510015, Alameda Super. Ct.) In August 2015, the Hon. Wynne Carvill granted final approval of Settlement in the gross amount of \$995,000.00, and the court granted attorney's fees request of 33.33%.

k. *Kane et al. v. Valley Slurry Seal*, (No. CV08-2483, Yolo Super. Ct.) In March 2016 after a class trial with a verdict in the class's favor, the Honorable Daniel P. Maguire, awarded Kingsley & Kingsley and co-counsel \$996,232.72 in attorney's fees.

l. *Aparacio v. Abercrombie & Fitch Stores, Inc.*, (No. BC499281, L.A. Super. Ct.) In June 2016, the Hon. Kenneth Freeman granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorney's fees request of 33.33%.

m. *Pineda, et al. v. Grimmway Enterprises, Inc.*, (No. BCV-15-101333, Kern Super. Ct.) In January 2018, the Hon. Stephen D. Schuett granted final approval of Settlement in the gross amount of \$9,000,000 with attorneys' fees request of 33.33%.

39. Kingsley & Kingsley, APC filed its first motion for class certification in the year 2000 and since that time has been appointed class counsel on dozens of wage and hour class actions that have been approved for class certification. Since 2012, Kingsley & Kingsley, APC has moved for class certification in 15 matters and has successfully obtained class certification in 15 of those cases. A brief sampling of which includes:

a. *Melendrez v. JK Communications*, No. BC497692, (L.A. Super. Ct., filed December 19, 2012) (court granted contested class certification and appointed Kingsley & Kingsley class counsel).

b. *Amaro et al. v Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-SAB (E.D. Cal., filed February 3, 2014) (court granted contested class certification and appointed Kingsley & Kingsley co-class counsel).

- 1 c. *Suarez v. Mazatlan, Inc.*, No. 37-2015-00002978-CU-OE-CTL (S.D. Super. Ct.,
2 filed January 27, 2015) (court granted contested class certification and appointed
3 Kingsley & Kingsley class counsel).
- 4 d. *Ruiz v. Daniel C. Salas Harvesting, Inc.*, Kings County Superior Court
5 (16C0214). contested class certification granted in June 2020.
- 6 e. *Weldon v. Geo Corrections & Detentions, LLC*, Kern County Superior Court
7 (BCV-16-102833), contested class certification granted in 2018.
- 8 f. *Patton v. Skyler Electric*, Nevada County Superior Court, (CU17-082544),
9 contested class certification granted in June 2020.
- 10 g. *Hameister v. Jaco Oil Company*, Kern County Superior Court (BCV-17-102876),
11 contested class certification granted in August 2020.

12 40. After factoring in the risks explained above, I believe that the proposed settlement
13 is fair and reasonable.

14 41. The proposed plan of allocation distributes Settlement funds proportionally based
15 on each aggrieved employees workweeks as compared to the aggregate workweeks covered by
16 the Settlement and should therefore be approved as fair, adequate, and reasonable.

17 **ATTORNEYS' FEE AWARD**

18 42. As detailed fully in the Settlement Agreement, the settlement provides for
19 Defendant to create a Maximum Settlement Amount of \$400,000.00. From that fund, the Parties
20 agreed that Plaintiff requests an award of attorneys' fees for PAGA Counsel in the amount of
21 \$133,333.00, or 33.33% of the Gross Settlement Payment, and \$10,000.00 in reimbursement for
22 litigation costs.

23 43. In addition to the complexity of this case, Counsel has borne the entire risk and
24 costs of this litigation during the entire time that it has been pending, all on a pure contingency
25 basis. Through the investment of substantial effort and resources, Counsel has secured an
26 outstanding Settlement on behalf of the members of the Class. Defendant vigorously contested
27 liability, the amount of claimed damages, and the propriety of class certification. It is this kind
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1 of situation, involving complex issues, that has been recognized as justifying a substantial
2 attorney fee award.

3 44. I am very familiar with the contingent fee market throughout California and in the
4 San Bernardino County area, particularly as it pertains to complex employment, wage and hour,
5 and class action litigation. On behalf of my firm, I have negotiated numerous contingency fee
6 agreements with plaintiffs, both as individuals and as representatives in class action suits. Many
7 of those agreements provided that counsel will receive a fee that is between 33% and 40% of any
8 recovery that is obtained, and, in addition, that counsel be reimbursed for the costs they incurred
9 out of the recovery amount. The named Plaintiff in this action signed a contingency fee
10 agreement that stated that counsel would be able to make a fee of up to 40% of any recovery if
11 the case settles. These are typical and standard percentages in employment-related contingency
12 agreements throughout California.

13 45. There are always risks attendant to billing cases on a contingency basis. Those
14 risks are even higher in the current economic climate. Kingsley & Kingsley bills the vast
15 majority of its cases on contingency, and has been affected by recent bankruptcy filings. In three
16 separate cases, *Lozoya v. Shore House Café, Inc.*, No. 30-2008-00082103-CU-OE-CJC (Orange
17 Super. Ct. filed Mar. 7, 2008) and *Davis v. Crossfire Marketing Group, LLC*, No.
18 CIVRS1207797 (San Bernardino Super. Ct. filed October 5, 2012), the defendants both filed for
19 bankruptcy protection in June 2011 and January 2015 after years of litigation. My firm advanced
20 costs and incurred thousands of dollars in fees that will never be recovered.

21 46. Kingsley & Kingsley has been involved in numerous lengthy and protracted
22 appeals process before the California Court of Appeal, the Ninth Circuit, the Seventh Circuit,
23 and the United States Supreme Court. Our firm specifically has taken and lost some issues on
24 appeal that required the write-off of significant legal fees. Also, our firm has been successful on
25 appeal and overturned unfavorable lower court rulings or successfully fought to have successful
26 rulings affirmed. Below is just a sample of some of these appeals:

27 a. *D'Este v. Bayer Corp.*, 565 F.3d 1119 (9th Cir. 2009) (lower court ruling that
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pharmaceutical sales representatives are exempt employees affirmed);

- b. *Budrow v. Dave & Buster's of California, Inc.*, 171 Cal. App. 4th 875 (2009) (lower court ruling in employer's favor that certain employees can share in mandatory tip pool affirmed);
- c. *Etheridge v. Reins Int'l California, Inc.*, 172 Cal. App. 4th 908 (2009) (lower court ruling in employer's favor that certain employees can share in mandatory tip pool affirmed);
- d. *Areso v. CarMax, Inc.*, 195 Cal. App. 4th 996 (2011) (lower court ruling in employer's favor approving employer's commission pay plan affirmed) ;
- e. *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 183 L. Ed. 2d 153 (2012) (lower court ruling that pharmaceutical sales representatives are exempt employees affirmed);
- f. *Schaefer-LaRose v. Eli Lilly & Co.*, 679 F.3d 560 (7th Cir. 2012) (lower court ruling that pharmaceutical sales representatives are exempt employees affirmed);
- g. *Fowler v. Carmax, Inc.*, No. B238426, 2013 WL 1208111 (Cal. Ct. App. Mar. 26, 2013), cert. granted, judgment vacated sub nom. *CarMax Auto Superstores California, LLC v. Fowler*, 134 S. Ct. 1277, 188 L. Ed. 2d 290 (2014) (lower court granted employer's motion to compel arbitration, Court of Appeal reversed, U.S. Supreme Court affirmed lower court);
- h. *Salazar v. Apple Am. Grp., LLC*, No. E059562, 2015 WL 314703 (Cal. Ct. App. Jan. 26, 2015), review denied (Apr. 22, 2015), cert. denied, 136 S. Ct. 688, 193 L. Ed. 2d 519 (2015) (lower court ruling in employee's favor on motion to compel arbitration affirmed);
- i. *Anaya v. J's Maint. Serv., Inc.*, No. B261662, 2016 WL 519867 (Cal. Ct. App. Feb. 9, 2016) (lower court ruling in employee's favor on motion to compel arbitration affirmed);
- j. *Cortez v. Doty Bros. Equipment Company, Inc.* (2017) 15 Cal.App.5th 1

- (reversing in part and affirming in part trial courts order compelling arbitration);
- k. *Lopez v. Friant & Associates, L.L.C.* (2017) 15 Cal.App.5th 773 (reversing summary judgement in favor of employer on wage statement claim);
- l. *Kane v. Valley Slurry Seal Company*, Case No. C079558, Cal. Ct. App. May 8, 2018) (affirming judgement for employees after bench trial);
- m. *Kim v. Reins International California*, Case No. S246911. Oral argument was held before the California Supreme Court on January 6, 2020 and a decision was published in March 2020.

ATTORNEYS' FEES

47. Here, a lodestar cross-check confirms that the percentage requested is reasonable. PAGA Counsel have an aggregate lodestar in the amount of \$68,275, which represents 106.1 hours of attorney work on this litigation from its inception through the date of this filing of Plaintiff's instant Motion.

48. As such, PAGA Counsel is asking for a multiplier of 1.95.

49. The amount of time spent on this case (over 106 hours to date), which culminated in a very favorable proposed Settlement for the Class, is reasonable given the complexity and novelty of the issues involved, the vigorous defense, the length and intensity of the litigation, and the exceptional results obtained.

50. PAGA Counsel litigated this action with great efficiency in light of the amount of work required to achieve the Settlement.

51. The requested hourly rates in this case range from \$375.00 per hour to \$900.00.

52. PAGA Counsel's hourly rates are fully supported by their experience and reputation in handling complex employment litigation, including wage and hour class actions.

53. Mr. Kingsley is a 26-year attorney with expertise in wage and hour class action lawsuits. He is billed at \$900 per hour.

54. He has litigated several hundred such cases, including at the appellate level at the U.S. Supreme Court, California Supreme Court, the Ninth Circuit, and the California Court of

1 Appeal.

2 55. He is also a prolific speaker at various seminars on employment law and has
3 contributed to legal publications on employment topics.

4 56. In light of the impending increase of experienced lawyers in specialized practice,
5 I believe that the hourly rates charged by my firm are fair and reasonable and are comparable to
6 or less than those charged by my colleagues in California and the national market for prosecuting
7 or defending class actions.

8 57. My office billed for the following three attorneys for work performed on this
9 case: Eric Kingsley, Shannen Garrett, and me.

10 58. I am a partner at Kingsley & Kingsley, APC. I received my Bachelor of Arts
11 degree, *cum laude*, from the University of California San Diego and my law degree from UCLA
12 School of Law in 2008, where I was active in the Women's Law Journal and community-based
13 legal clinics. I have been practicing since 2008 and am billed at \$650 per hour.

14 59. Shannen T. Garrett was an Associate Attorney at Kingsley & Kingsley, APC. Ms.
15 Garrett earned her J.D. from Loyola Law School and was admitted to practice in October 16,
16 2017. She is billed at \$475 per hour.

17 60. PAGA Counsel's charged rate are commensurate with the prevailing market rates
18 in San Bernardino County for attorneys of comparable experience and skill handling complex
19 litigation.

20 61. PAGA Counsel's rates in calculating the lodestar are the same rates charged to
21 non-contingent hourly clients and thus necessarily reflect the current market value of counsel's
22 legal services.

23 62. PAGA Counsel made all reasonable attempts to avoid duplication of assignments
24 and to assign tasks to timekeepers at the appropriate billing rates.

25 63. Finally, PAGA Counsel's rates are in line with the adjusted Laffey Matrix, which
26 is a fee scale that courts often consult in determining the reasonableness of hourly rates. Under
27 the adjusted Laffey Matrix, a reasonable rate for an attorney with 20+ years of experience, such
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as Mr. Kingsley, is \$919, a reasonable rate for an attorney with 14 years of experience, such as Ms. Szamet is \$764, and a reasonable rate for an attorney with 5 years of experience, such as Ms. Garrett, is \$468.

64. Kingsley & Kingsley's attorneys' fees in the present case are broken down as follows:

<u>ATTORNEY</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTALS</u>
Eric B. Kingsley	8.3	\$900.00	\$7,470
Kelsey M. Szamet	82	\$650.00	\$53,300
Shannen Garrett	15.8	\$650.00	\$7,505
KINGSLEY TOTAL			
ATTORNEYS' FEES	106.1		\$68,275¹

65. The Kingsley, APC has spent significant time extensively investigating, researching, and litigating this matter, including but not limited to the following:

- a. intake and interviewing Plaintiff and witnesses and flushing out facts and issues;
- b. researching employer and related causes of action;
- c. researching other pending and former matters against Defendant;
- d. fact development and investigating Defendant's ownership structure
- e. researching and analyzing relevant claims under B&P 17200;
- f. investigation and discussion regarding job functions, duties, compensation, policies, and procedures, etc.;
- g. regular meetings with Plaintiff and communicating with Plaintiff and aggrieved employees;
- h. regular meetings and or communicating with Co-Counsel;
- i. drafting pleadings (Complaints, Motion for Preliminary Approval, various documents related to Preliminary Approval, Motion for Final Approval, various

¹ The Total Attorneys' Fees does not include the anticipated 5-10 hours of future time to handle the approval hearing in January and to oversee the Settlement administration process.

documents related to Final approval, etc.);

- j. researching private right of action and various impact on class actions;
- k. interviewing aggrieved employees about their work experiences;
- l. preparing for and attending mediation;
- m. discussing issues related to damage model calculations;
- n. preparing and analyzing damage models;
- o. negotiating the terms of the settlement;
- p. reviewing and making changes to the Settlement Agreement;
- q. drafting and editing all documents for Preliminary and Final Approval;
- r. monitoring Notice and settlement administration procedures;
- s. coordinating and overseeing all aspects of the administration of the Settlement (review documentation, approve form and content, etc.); and multiple communications with defense counsel.

66. Based on the aggregate lodestar, Counsel is requesting a multiplier of 1.95.

67. I believe the request for attorneys' fees in the amount of \$133,333.33 is fair and reasonable given the complexity and novelty of the issues involved, the vigorous defense, and the exceptional results obtained. As explained above, Counsel's diligent litigation efforts and experience led to an outstanding settlement.

FACTORS THAT SUPPORT THE APPROVAL OF A MULTIPLIER

68. This case dealt with difficult legal and factual questions. Significantly, the risk attendant to the underlying claims in this matter was great considering Defendant's defenses. As discussed in detail above and in the Motion, were this case to proceed, Defendant would have a strong incentive to litigate tenaciously. There are genuine issues in dispute.

69. As discussed above and in the Motion, Counsel are skilled wage and hour practitioners with decades of experience who diligently prepared and litigated this matter as discussed.

70. To achieve the ultimate result in this case, my firm had to incur substantial risk

1 and expense, and were precluded from taking other fee generating employment for over 106
2 hours of attorney time.

3 71. This matter had been handled purely on a contingency fee basis and my firm has
4 advanced many thousands of dollars in costs while deferring all payment of fees, with no
5 guarantee that any of the fees incurred or costs advanced would ever be recovered, and diverting
6 significant firm resources to prosecution of this matter.

7 72. PAGA Counsel believe this is an exceptional result that has been well received by
8 the Aggrieved Employees.

9 **ATTORNEYS' COSTS**

10 73. Pursuant to the Settlement Agreement, PAGA Counsel shall not seek an amount
11 in excess of \$10,000 for litigation costs.

12 74. Kingsley & Kingsley has incurred \$ \$6,223.23 in costs to date.

13 75. PAGA Counsel anticipates incurring an additional \$400-500 in costs to file, serve,
14 and copy this motion and the final approval motion; to prepare for and attend the hearing; and for
15 future copy charges.

16 76. As such, PAGA Counsel is requesting a cost reimbursement of \$6,723.23.

17 77. All of the requested costs are reasonable in amount and were necessarily incurred
18 by Counsel in prosecuting this litigation. A true and correct copy of Kingsley's cost ledger is
19 attached hereto as Exhibit "2".

20 78. All of these costs have been incurred in the course of this litigation, and all costs
21 advanced have already been paid by PAGA Counsel.

22 **THE NAMED PLAINTIFFS' ENHANCEMENT SHOULD BE APPROVED**

23 79. The Settlement Agreement calls for an enhancement payment of \$5,000.00, to be
24 paid from the Maximum Settlement Amount.

25 80. The time spent by Ritchie Robinson includes identifying competent counsel,
26 providing information to PAGA Counsel regarding her relevant employment experience,
27 compiling documents, conducting several meetings and conferences with PAGA Counsel to
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1 discuss the status of the case and the theories of liability, and reviewing settlement documents.
2 Plaintiff has also agreed to a broader release than the Aggrieved Employees and expressly
3 waived the rights provided under California Civil Code section 1542.

4 81. PAGA Counsel considers this to be a fair and reasonable enhancement.

5 82. The enhancement takes into consideration the time, effort, risks, and expense
6 incurred by Plaintiff in coming forward to litigate this matter on behalf of all Aggrieved
7 Employees.

8 **PROOF OF SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT**

9 **AGENCY**

10 83. As indicated on the Proof of Service, Plaintiff's accompanying Motion for Final
11 Approval of Attorneys' Fees and Costs ("Motion") was uploaded to the Labor and Workforce
12 Development Agency's ("LWDA") website on the date this Motion was filed. Proof of
13 submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA
14 confirming receipt is attached hereto as Exhibit "3".

15 **EXHIBITS**

16 84. Attached hereto as Exhibit "1" is a true and correct copy of the fully-executed
17 PAGA Settlement and Release ("Settlement" or "Settlement Agreement").

18 85. Attached hereto as Exhibit "2" is a true and correct copy of the Kingsley &
19 Kingsley, APC costs ledger reflecting costs incurred in this matter.

20 86. Attached hereto as Exhibit "3" is a true and correct copy of the proof of
21 submission to the LWDA as referenced in paragraph 89 above.

22 I declare under penalty of perjury under the laws of the state of California that foregoing
23 is true and correct.

24 This declaration was executed this 13th day of December, 2022, in Altadena, California.

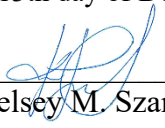
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Kelsey M. Szamet

EXHIBIT "1"

PAGA SETTLEMENT AND RELEASE

This PAGA SETTLEMENT AND RELEASE (hereinafter, “Settlement Agreement” or “Settlement”) is made and entered into by and between Plaintiff RITCHIE ROBINSON (hereinafter, “Plaintiff”), an individual, on behalf of the State of California, as a private attorney general, on the one hand, and Defendants S T MOLL, INC. DBA INTEGRITY TIRE, a corporation; BIG BRAND TIRE COMPANY, INC., a corporation; CHRIS MOLL, an individual; STEVE MOLL, an individual; TINA MOLL, an individual (collectively, “Defendants”), on the other hand. Plaintiff and Defendants are collectively referred to herein as the “Parties,” or individually as “Party.”

This Settlement shall be binding on Plaintiff and the Aggrieved Employees, or PAGA Members, (as defined below) whom Plaintiff purports to represent and on Defendants, and its present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be jointly liable with Defendants, subject to the terms and conditions hereof and the approval of the Court.

For the purposes of this Settlement, the terms below have the following meanings:

1. REPRESENTATIONS AND DEFINITIONS.

1.1. “Action” or “Lawsuit” refers to the civil action filed in the Superior Court of the State of California for the County of San Bernardino, entitled *RITCHIE ROBINSON, an individual, on behalf of the State of California, as a private attorney general, PLAINTIFF v. S T MOLL, INC. DBA INTEGRITY TIRE, A CORPORATION; BIG BRAND TIRE COMPANY, INC., A CORPORATION; CHRIS MOLL, AN INDIVIDUAL; STEVE MOLL, AN INDIVIDUAL; TINA MOLL, AN INDIVIDUAL, and DOES 1 thru 50, inclusive, Defendants*, San Bernardino County Superior Court, Case No. CIVSB2129140 initiated on October 12, 2021.

1.2. “Aggrieved Employee(s)” or “PAGA Member(s)”, singularly or plural, are defined as: All persons who are employed or have employed as an hourly employee by S T

Moll, Inc. dba Integrity Tire, in the State of California who worked at any point from August 8, 2020 to October 18, 2021.

- 1.3. “Counsel for Defendants” or “Defense Counsel” shall refer to Delmore Greene LLP.
- 1.4. “Court” refers to the San Bernardino County Superior Court.
- 1.5. “Released Claims”, applicable to Plaintiff and all aggrieved employees, shall be Labor Code §2699, et seq. based upon alleged underlying violations of Labor Code §§ 201, 202, 203, 226.7, 510, 512, 1194, 1194.2, 1199, and 2802, as well as any related or derivative claims, as against the Releasees during the Release Period.
- 1.6. “Eligible Work Weeks” means the total number of workweeks that each Aggrieved Employee worked for ST Moll, Inc. during the Release Period.
- 1.7. “Approval Date” will be the date the Court has signed and entered the Final Approval Order (in substantially the form attached hereto as **Exhibit “B”**) or the Final Judgment (in substantially the form attached hereto as **Exhibit “C”**), as defined below, whichever is sooner.
- 1.8. “Final Approval” or “Final Approval Order” means the Court’s order granting approval of the Settlement.
- 1.9. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalty Allocation Amount calculated according to the number of Eligible Work Weeks worked during the Release Period.
- 1.10. “Judgment” or “Final Judgment” means the judgment entered by the Court based upon the Final Approval of Settlement.
- 1.11. “LWDA” refers to the California Labor and Workforce Development Agency, the agency entitled, under Labor Code Section 2699(i).
- 1.12. “LWDA PAGA Payment” means the 75% of the PAGA Penalty Allocation Amount paid to the LWDA under Labor Code Section 2699(i).
- 1.13. “Maximum Settlement Amount” means the total amount Defendants agree to pay

under the Settlement, which is, and shall not to exceed, \$400,000.00. The Maximum Settlement Amount includes any and all payments contemplated by the Settlement, including but not limited to, Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Settlement Administration Expenses Payment, the Individual Release Settlement Amount, and employer side payroll taxes, if any.

- 1.14. “PAGA” refers to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code Section 2699, *et seq.*
- 1.15. “PAGA Counsel” shall refer to Kingsley & Kingsley APC.
- 1.16. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses Payment” mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys’ fees and litigation expenses, respectively, incurred to prosecute the Action.
- 1.17. “PAGA Data” or “PAGA List” means Aggrieved Employee identifying information in Defendants’ possession including the Aggrieved Employee’s name, last-known mailing address, last-known telephone number, last-known email address, Social Security number, employee identification number, dates of employment, and number of Eligible Work Weeks. The PAGA List shall be based on the data kept in the ordinary course of business in Defendant St Moll Inc.’s business records.
- 1.18. “PAGA Member Address Search” means the Settlement Administrator’s investigation and search for current PAGA Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Settlement Administrator with Aggrieved Employees via mail, telephone, and email.
- 1.19. “Release Period” shall mean and refer to the period from August 8, 2020 to October 18, 2021.
- 1.20. “PAGA Penalty Allocation Amount” or “Net Settlement Amount” means the total amount of PAGA civil penalties to be paid from the Maximum Settlement Amount.

The PAGA Penalty Allocation will be calculated by deducting from the Maximum Settlement Amount the combined total of any PAGA Counsel Fees Payment approved by the Court, any PAGA Counsel Litigation Expenses approved by the Court, any Settlement Administration Expense Payment approved by the Court, any Service Enhancement approved by the Court, the Individual Release Settlement Amount, and any other costs of any kind associated with the settlement. The PAGA Allocation Settlement is estimated to be in the amount of \$231,666.67, which shall be split between the LWDA and the Aggrieved Employees as required by Labor Code §2699(i) with an estimated \$173,750.00 (75%) going to the LWDA and an estimated \$57,916.67 (25%) going to the Aggrieved Employees. In the event that the PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses, any Service Enhancement approved by the Court, the Individual Release Settlement Amount, Settlement Administration Expense Payment, are increased or decreased, the amount allocated, the PAGA Penalty Allocation Amount shall be adjusted accordingly.

- 1.21. “Releasees” or “Released Parties” means Defendants and their past or present officers, directors, members, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers, and other individuals or entities that could be alleged to be jointly liable with Defendants for the Released Claims.
- 1.22. “Settlement” or “Settlement Agreement” shall mean the terms and conditions as set forth in this PAGA SETTLEMENT AND RELEASE agreement.
- 1.23. “Settlement Administrator” shall mean and refer to ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.24. “Settlement Administration Expenses Payment” means the amount the Settlement Administrator will be paid from the Maximum Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Final Approval of the Settlement.

1.25. “Service Enhancement” means the amount of \$5,000 that Plaintiff will ask the Court to approve in connection with and in recognition of Plaintiff’s work in prosecuting the Action of behalf of the State of California and all Aggrieved Employees.

2. RECITALS.

- 2.1. Relevant Procedural History. On August 5, 2021, Plaintiff electronically filed a pre-litigation PAGA Claim Notice to the LWDA and mailed by certified mail, return receipt requested, to Defendant S T MOLL, INC. DBA INTEGRITY TIRE (“S T Moll”) setting forth the specific facts and theories of the violations alleged against Defendant S T Moll, as prescribed by Labor Code § 2699, *et seq.*
- 2.2. On October 8, 2021 filed an Amended PAGA Letter to the LWDA and mailed by certified mail, return receipt requested, to Defendants S T Moll and Big Brand Tire Company (“Big Brand”).
- 2.3. On October 12, 2021, Plaintiff submitted a Second Amended PAGA Letter to the LWDA website and mailed by certified mail, return receipt requested to include additional Defendants Chris Moll, Steve Moll, and Tina Moll.
- 2.4. On October 12, 2021, Plaintiff filed a representative action under PAGA, bearing Case No. CIVSB 2129140 (the “Action”).
- 2.5. On December 21, 2021, Plaintiff filed a First Amended Complaint (“FAC”) alleging the same cause of action in his original complaint, including an additional violation under PAGA for violation Labor Code §558.1 and adding Defendants Big Brand, Chris Moll, Steve Moll, and Tina Moll as named Defendants to the Action.
- 2.6. The Action asserts a single cause of action for Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code § 2802. Plaintiff alleges that Defendants’ policies and practices during the Release Period resulted in violations of Labor Code sections 201, 202, 203, 226.7, 510, 512, 1194, 1194.2, 1199, and 2802. Plaintiff alleges that these underlying Labor Code violations give rise to a claim pursuant to Labor Code §2699, *et seq.*

- 2.7. Discovery and Settlement Negotiations. After the matter was at issue, the Parties began to engage in informal fact discovery and exchange of pertinent information to understand the nature of the allegations and the scope of potential liability.
- 2.8. Thereafter, the Parties engaged in arms-length settlement discussions, which included a full day mediation with esteemed mediator Barry Winograd, Esq. Through the exchange of information and attendant discussions between the Parties, Plaintiff learned that the number of Aggrieved Employees is no more than 255 (including Plaintiff) and there is a maximum of 12,464 Eligible Work Weeks at issue.
- 2.9. This Settlement relates solely to the PAGA claim on behalf of all Aggrieved Employees whom Plaintiff purports to represent in the Lawsuit as to its alleged claim for violation of Labor Code §2699, *et seq.*, based upon the underlying violations of Labor Code §§ 201, 202, 203, 226.7, 510, 512, 1194, 1194.2, 1199, and 2802, as well as any related or derivative claims, as against the Releasees during the Release Period.
- 2.10. Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit, deny liability for the Released Claims, and further deny that this Action is appropriate for representative treatment for any purpose other than settling this Lawsuit. Defendants contend, among other things, that they have complied at all times with the California Labor Code, the related California Wage Orders and the California Business & Professions Code, all other state and federal wage laws, and further contend that all of its respective employees were and are paid and reimbursed properly and that the Lawsuit is without merit. Defendants have denied and continue to deny each and every material factual allegation and alleged claim asserted against them in the Lawsuit.
- 2.11. Neither the existence of this Settlement nor anything contained in this Settlement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants. Nothing herein shall constitute an admission

by Defendants that the Lawsuit was properly brought as a class or representative action other than for settlement purposes. Settlement of the Lawsuit, the negotiation and execution of this Settlement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement or the settlement of the Lawsuit: (a) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of either Defendants or of the truth of any of the factual allegations in the operative Complaint in the Lawsuit; (b) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omissions on the part of Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal; and, (c) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for representative treatment, class certification or administration other than for purposes of administering this Settlement.

2.12. The Parties recognize that the issues presented in the Lawsuit are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of litigation. The Parties have taken into account the risk and uncertainty of the outcome inherent in any litigation.

2.13. Plaintiff and PAGA Counsel have diligently pursued an investigation of the Aggrieved Employees' claims against Defendants.

2.14. Based on their own independent investigations and evaluations, the Parties and their respective counsel are of the opinion that the settlement for the consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and is in the best interests of Plaintiff, the Aggrieved Employees, and Defendants in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, PAGA Counsel believes that the settlement amount entered

into is in the best interests of the Aggrieved Employees and that the settlement for each Aggrieved Employee is fair, reasonable, and adequate given the inherent risk of litigation.

2.15. The purpose of this Settlement is to settle and compromise the Lawsuit, all Released Claims by Plaintiff and the Aggrieved Employees that Plaintiff and the Aggrieved Employees have against Defendants and the Releasees (as defined below).

3. MONETARY TERMS.

3.1. In consideration of the mutual covenants, promises and representations set forth in this Settlement, Plaintiff, on behalf of himself, the State of California, and all Aggrieved Employees, and Defendants agree to settle and compromise the Lawsuit and the Released Claims.

3.2. Maximum Settlement Amount. As consideration for the settlement described herein and the release contained in this Settlement, Defendants agree to pay a total settlement of \$400,000.00 ("Maximum Settlement Amount"). Defendants have no obligation to pay the Maximum Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Settlement Administrator will disburse the entire Maximum Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Maximum Settlement Amount will revert to Defendants. Except as provided in paragraph 8 herein, under no Circumstances will the total amount of the Maximum Settlement Amount exceed \$400,000.00.

3.3. Payments from the Maximum Settlement Amount. The Settlement Administrator will make and deduct the following payments from the Maximum Settlement Amount, in the amounts specified by the Court in the Final Approval of Settlement:

3.3.1. To PAGA Counsel: As part of the request for approval of this Settlement, PAGA Counsel will request court approval of 33.33% of the Maximum Settlement Amount, which is currently anticipated to be \$133,333.33 in

attorneys' fees and attorneys' cost reimbursement of up to \$10,000.00. Any attorneys' fees and costs awarded to PAGA Counsel, hereinafter referred to as "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment", shall fully compensate and reimburse PAGA Counsel for any and all of the work already performed in connection with the Lawsuit and all work remaining to be performed in fully and finally resolving the Lawsuit. Should PAGA Counsel request a lesser amount for attorneys' fees and costs and/or the court approve a lesser amount, the difference shall be divided among the participating Aggrieved Employees pursuant to the allocation described herein. Payment of PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment will be reflected in a Form 1099 to PAGA Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments.

3.3.2. To the Settlement Administrator: Settlement Administrator costs ("Settlement Administration Expenses Payment") of not more than \$10,000.00. If the Court approves settlement administrator costs less than the amount requested, the difference shall be divided among the participating Aggrieved Employees pursuant to the allocation described herein.

3.3.3. To Plaintiff: Plaintiff will request approval of the Service Enhancement in the amount of \$5,000.

3.3.4. To the LWDA and Aggrieved Employees: The PAGA Penalty Allocation will be calculated by deducting from the Maximum Settlement Amount the combined total of any PAGA Counsel Fees Payment approved by the Court, any PAGA Counsel Litigation Expenses approved by the Court, any Settlement Administration Expense Payment approved by the Court, any Service Enhancement approved by the Court, and any other costs of any kind associated with the settlement. The PAGA Penalty Allocation Amount is estimated to be

in the amount of \$231,666.67 (“PAGA Penalty Allocation Amount”), paid from the Maximum Settlement Amount, and shall be split between the LWDA and the Aggrieved Employees as required by Labor Code §2699(i) with an estimated \$173,750.00 (75%) going to the LWDA and an estimated \$57,916.67 (25%) going to the Aggrieved Employees. In the event that the PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses, Settlement Administration Expense Payment, any Service Enhancement approved by the Court, or the Individual Release Settlement Amount, are increased or decreased, the amount allocated, the PAGA Penalty Allocation Amount shall be adjusted accordingly.

3.3.4.1. Each Aggrieved Employee shall receive a portion of the Maximum Settlement Amount on a pro-rata basis. The actual amount paid will be calculated through a two-step process. First, the portion of the “PAGA Penalty Allocation Amount” that is allocated to Aggrieved Employees (estimated to be \$57,916.67) will be divided by the total number of Eligible Work Weeks worked by Aggrieved Employees during the Release Period (the “Pay Period Amount”) and then the Pay Period Amount will be multiplied by the number of Eligible Work Weeks worked by the individual Aggrieved Employee as determined by the Settlement Administrator. The resulting number is the “Individual Settlement Payment” that shall be paid to the Aggrieved Employees in the form of a payment check (“Individual PAGA Payment”).

3.3.4.2. If the Court approves a PAGA Penalty Allocation Amount of less than the amount requested, the difference shall be divided pro rata among the participating Aggrieved Employees pursuant to the allocation described herein. The Settlement Administrator will report the Individual PAGA Payments on IRS 1099 Forms. Aggrieved Employees assume full

responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.3.5. Tax Treatment and Allocation of Individual PAGA Payments and Maximum Settlement Amounts. The Parties agree that Individual PAGA Payments sent to Aggrieved Employees will be characterized 100% as penalties and Form 1099s will be issued. Nothing in this Settlement is intended to constitute legal advice regarding federal, state and/or local tax obligations. Plaintiff acknowledges that he has obtained no tax advice from Defendants and that neither Defendants nor Counsel for Defendants have made any representation concerning the tax consequences, if any, of the Settlement Amount in this Agreement. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any U.S. or Federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendants are not responsible for any employee tax obligations regarding the allocation of the Maximum Settlement Amounts. Payment Not Part of Retirement Plan(s) or Benefit(s). The Maximum Settlement Amount and any Individual PAGA Payment paid to Plaintiff and the Aggrieved Employees pursuant to this Settlement is not intended to count as earnings by Plaintiff or the Aggrieved Employees.

3.4. To Plaintiff: Plaintiff shall enter into a separate, individual settlement agreement to settle Plaintiff's claims on an individual basis in the amount of not more than \$10,000.00 ("Individual Release Settlement Amount"), which shall be paid from the Maximum Settlement Amount. Plaintiff shall enter into a full mutual release of all claims including a Civil Code Section 1542 waiver and a standard confidentiality provision.

4. **SETTLEMENT FUNDING AND PAYMENTS.**

- 4.1. Aggrieved Employees and Work Weeks. Based on a review of its records to date, Defendants represent that there are 12,464 Eligible Work Weeks at issue and 255 Aggrieved Employees.
- 4.2. PAGA Data. Within fifteen (15) calendar days after the Final Approval Date, Defendants will compile and send a list of all Aggrieved Employees to the Settlement Administrator containing: (1) name; (2) last known home address and telephone number; (3) number of pay periods as an Aggrieved Employee during the Release Period; and (4) social security number (“PAGA List” or “PAGA Data”). The PAGA List shall be based on the data kept in the ordinary course of business in Defendant St Moll Inc.’s business records. The format and transmittal of the list shall be in excel format and determined by the requirements of the Settlement Administrator. To protect Aggrieved Employees’ privacy rights, PAGA Counsel and the Settlement Administrator must maintain the PAGA Data in confidence, use the PAGA Data only for purposes of this Settlement and for no other purpose, and restrict access to the PAGA Data to attorneys and employees who need access to the PAGA Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify PAGA Counsel of any Aggrieved Employee information missing or omitted from the PAGA Data. Without any extension of the deadline by which Defendants must send the PAGA List to the Settlement Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted PAGA Data.
- 4.2.1. Within three (3) days of receipt of the PAGA List, the Settlement Administrator shall send an email to the Parties confirming receipt of the PAGA List and indicating the number of Aggrieved Employees and the number of Eligible Work Weeks included in the PAGA Data.
- 4.3. Funding and Payments of Maximum Settlement Amount. Within fifteen (15) calendar days after the Final Approval Date, Defendants shall transmit the entire

Maximum Settlement Amount due under this Settlement Agreement to the Settlement Administrator. The Settlement Administrator shall not release any funds prior to the Effective Date. No later than 3 calendar days after the Effective Date, the Settlement Administrator shall disburse funds pursuant to the terms specified in this Settlement Agreement. Effective Date shall mean when the Court's order approving the settlement meets the following conditions: (i) the deadline to file an appeal of the approval order has expired and no appeals are filed; or (ii) if one or more appeals are filed, after any appeals are dismissed or the settlement is affirmed after an appeal, and the approval order is not subject to further review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for rehearing en banc, petitions for writ of certiorari, or otherwise, and such appeal or other review has been finally resolved in such manner that affirms the judgment or order in its entirety. If, for any reason, any of the following occur, the settlement administrator shall return all deposited settlement funds to Defendants within 15 calendar days of any such order impacting the settlement. (i) the Settlement is not approved, is overturned, or is materially modified by the Court or on appeal, (ii) the Judgment does not become final, or (iii) this Settlement is terminated, cancelled, or fails to become effective for any reason.

4.3.1. Within twenty-five (25) calendar days after the Final Approval Date, the Settlement Administrator shall run all the addresses provided in the PAGA Data through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information. The Settlement Administrator shall perform skip traces as necessary.

4.3.2. Within thirty (30) calendar days after the Final Approval Date, the Settlement Administrator shall mail via U.S. First Class mail each Individual

PAGA Payment to the last known address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. It will be conclusively presumed that an Aggrieved Employee's Individual PAGA Payment was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check. The date of the initial mailing of the payment check, shall be conclusively determined according to the records of the Settlement Administrator.

4.3.3. A letter approved by the Parties in advance of Plaintiff filing the Approval Motion explaining this Settlement will be included in the mailing of each Aggrieved Employee's Individual PAGA Payment ("PAGA Payment Letter"). The PAGA Payment Letter, substantially in the form attached hereto as **Exhibit "A"**, will notify all Aggrieved Employees of the binding nature of the release and the Parties agree that such shall have the same force and effect as if this Settlement were executed by each Aggrieved Employee.

4.3.4. Settlement Administrator shall ensure that 75% of the PAGA Penalty Allocation Amount is paid to the LWDA.

4.3.5. Settlement checks shall remain valid and negotiable for ninety (90) calendar days from the date of their issuance. If there are uncashed checks following this period, the Settlement Administrator will ensure the uncashed funds shall be forwarded to State of California Controller's Unclaimed Property Fund in the name of the Aggrieved Employees who did not cash their checks.

5. **RELEASE OF CLAIMS.**

5.1. Release by all Aggrieved Employees. Upon the approval by the Court of this Settlement, each Aggrieved Employee (including Plaintiff), shall, for the Release Period, be deemed to have, and by operation of the Order of Final Approval will have, expressly and irrevocably fully release and forever discharge Defendants and their

past or present officers, directors, members, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers, and any other individuals or entities that could be alleged to be jointly liable with Defendants (the foregoing are collectively referred to hereafter as the “Releasees”) from the Released Claims. The Final Approval Order shall preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and every Aggrieved Employee based on, arising out of, and/or related to any and all of the Released Claims

6. **MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** The Parties agree to jointly prepare and file an application or motion for approval of this settlement.

6.1. **Plaintiff’s Responsibilities.** The Parties recognize in accordance with Labor Code §2699(1)(2) that Court approval is required in the event of any settlement of a PAGA action [“The superior court shall review and approve any settlement of any civil action filed pursuant to this part.”]. However, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. Instead, in order to comply with the requirements of Labor Code §2699, Plaintiff shall file a noticed motion requesting approval of representative action settlement (“Approval Motion”). Plaintiff shall concurrently apply to the Court for the entry of an order approving the PAGA Penalty Allocation Amount provided for in this Settlement (“Proposed Order”)(see Exhibit “B” hereto) and a proposed Final Judgment (“Proposed Final Judgment”)(see Exhibit “C” hereto) in the amount of \$400,000.00 which requests that the Court: (1) enter judgment in the Lawsuit and permanently bar all members of the Aggrieved Employees from prosecuting any of the Released Claims released in this Settlement against Defendants and the Releasees; and (2) waive all rights to appeal. If, for any reason, the Court is not satisfied with the Approval Stipulation,

Plaintiff shall submit a Motion for Approval of Representative Action Settlement to the Court identifying the key terms of this Settlement and requesting that the Court approve the PAGA Penalty Allocation Amount provided for in this Settlement Agreement (“Approval Motion”) along with the Proposed Order and Proposed Final Judgment.

6.1.1. Submission to the LWDA. At the same time Plaintiff submits the Approval Motion to the Court, he shall also submit a copy of the Approval Motion to the LWDA.

6.2. Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than thirty (30) days after the full execution of this Settlement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court’s preliminary approval to the Settlement Administrator.

6.3. Duty to Cooperate. The Settlement is contingent upon the approval by the Court. If the Court should fail to approve the Settlement as agreed upon by the Parties, the Parties shall coordinate efforts to address the Court’s questions or concerns and resubmit the Approval Stipulation or a noticed motion if required by the Court. If, after the Parties make a second attempt to obtain approval of the terms of the Settlement, unless the Parties specifically agree to continue with their coordinated efforts to obtain Court approval, (a) the Court fails to approve this Settlement in the form agreed to by the Parties (except for the amount of attorneys’ fees or costs requested), or (b) the Court’s approval of this Settlement is reversed, modified, or declared or rendered void, then (i) this Settlement shall be considered null and void; (ii) neither this Settlement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed

with the Court. Invalidation of any material portion of this Settlement, except for the amount of attorneys' fees and costs, shall invalidate this Settlement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

7. SETTLEMENT ADMINISTRATION.

- 7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Settlement Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Settlement Agreement and to perform, as a fiduciary, all duties specified in this Settlement Agreement in exchange for payment of Settlement Administration Expenses Payment. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Settlement Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2. Employer Identification Number. The Settlement Administrator shall have and use its own Employer Identification Number for purposes of calculating any payroll tax withholdings, if any, and providing reports state and federal tax authorities.
- 7.3. Qualified Settlement Fund. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4. Administrator Duties. The Settlement Administrator has a duty to perform or observe all tasks to be performed or observed by the Settlement Administrator contained in this Settlement Agreement or otherwise.
- 7.5. Tax Reporting. The Settlement Administrator shall be solely responsible for all tax reporting, including issuing to each Aggrieved Employee an Internal Revenue Service Form 1099.
- 7.6. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Plaintiff's Counsel, or the Settlement Administrator based on mailings, distributions,

payments or reports made in accordance with or pursuant to this Agreement. This provision does not, however, prevent a Party from seeking enforcement of this Agreement.

8. **AGGRIEVED EMPLOYEE SIZE ESTIMATES AND ESCALATOR CLAUSE**

Based on its records, Defendants estimate that, as of the date of this Settlement Agreement, (1) there are 255 Aggrieved Employees and 12,464 Eligible Work Weeks at issue during the Release Period.

8.1. Increase in Eligible Work Weeks. As detailed in Paragraph 4.2 above, upon receipt of the PAGA List, the Settlement Administrator shall confirm to Plaintiff that the data is consistent with the terms of this Settlement Agreement. To the extent the number of Eligible Work Weeks at issue increases beyond 12,464 by more than 5%, Defendants shall increase the Maximum Settlement Amount by a proportionate amount. For example, if the number of Eligible Work Weeks increased by 6%, Defendants shall increase the Maximum Settlement Amount by 6%. If Defendants fails to increase the Maximum Settlement Amount proportionately, Plaintiff shall have the right to terminate this Settlement Agreement and the Parties will be restored to their positions prior to the Settlement and the Settlement shall be null and void.

8.2. Increase in Aggrieved Employees. As detailed in paragraph 4.2 above, upon receipt of the PAGA List, the Settlement Administrator shall confirm to Plaintiff that the data is consistent with the terms of this Settlement Agreement. To the extent the number of Aggrieved Employees increases beyond that number to the point that it will result in an increase of the cost of Settlement Administration beyond the amount that has been approved by the Court, Defendants shall separately bare the increased cost of claims administration outside of the Maximum Settlement Amount. If Defendants fail to remit payment of the increased cost of claims administration, Plaintiff shall have the right to terminate this Settlement Agreement and the Parties will be restored to their positions prior to the Settlement and the Settlement shall be null and void.

9. **CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Settlement Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1. **Waiver of Right to Appeal.** Provided the judgment is consistent with the terms and conditions of this agreement, specifically including the PAGA counsel fees payment and PAGA counsel litigation expenses payment, the parties, their respective counsel waive all rights to appeal from the judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the judgment, the parties' obligations to perform under this agreement will be suspended until such time as the appeal is finally resolved and the judgment becomes final, except as to matters that do not affect the amount of the net settlement amount.

10. **ADDITIONAL PROVISIONS.**

10.1. **Best Efforts.** The Parties agree to use their best efforts to carry out the terms of this settlement.

10.2. **Parties' Authority.** The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions hereof.

10.3. **Mutual Full Cooperation.** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other

efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, PAGA Counsel shall, with the assistance and cooperation of Defendants and its counsel, take all necessary steps to secure the approval of this Settlement from the Court.

10.4. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

10.5. No Admission. Nothing contained herein nor is the consummation of this Settlement to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants or any of the Releasees. Each of the Parties hereto has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

10.6. Non-Evidentiary Use. Whether or not the Final Approval Date occurs, neither this Settlement Agreement nor any of its terms nor the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendants or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Lawsuit, or any other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the Settlement pursuant to this Settlement Agreement or for Defendants to establish that an Aggrieved Employee has resolved any of his/her claims released through this Settlement Agreement.

10.7. Nullification. If (a) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties (except for the amount of attorneys' fees or costs), or (b) the Court's approval of this Settlement is reversed, modified, or declared or rendered void, then (i) this Settlement Agreement shall be considered null and void; (ii) neither this Settlement Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Settlement Agreement shall stand in the same position, without prejudice, as if the Settlement Agreement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Settlement Agreement, except for the amount of attorneys' fees and costs, shall invalidate this Settlement Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect. Defendant shall not be responsible for paying any of the Attorneys' Fees and Costs set forth in this Settlement, or any other fees and/or costs incurred by Class Counsel to effectuate this Settlement. In the event if Invalidation or any other termination of this Settlement Agreement shall have the same effect as would non-approval of the Settlement Agreement by the Court: the Parties shall revert to their previous positions, with all parties to this Settlement to stand in the same position, without prejudice, as if this Settlement Agreement had been neither entered into nor filed with the Court.

10.8. Res Judicata. The Released Parties shall have the right to file this Settlement, the Final Approval Order and Judgment, and any other documents or evidence relating to the Settlement in any action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar, reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10.9. Attorneys' Fees, Costs and Expenses. Except as specifically set forth herein, each party shall bear its/his/her own attorneys' fees, costs and expenses, taxable or

otherwise, incurred by him/her/it/them arising out of the Lawsuit, and shall not seek reimbursement thereof from any other party to this Stipulation.

10.10. Construction. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arm's-length negotiations between the Parties and that this Settlement Agreement constitutes the entire agreement between Plaintiff and Defendants regarding actual or potential claims asserted by Plaintiff against Releasees. Excluding any Arbitration or Confidentiality Agreement executed by Plaintiff with Defendants, both of which will remain in full force and effect, this Settlement Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential claims and the resolution of those claims, no other agreement, statement, or promise made by one Party to another as to any matter addressed in this Settlement Agreement shall be binding or valid.

10.11. Calendar Days. Unless otherwise noted, all reference to "days" in this Settlement shall be to calendar days. In the event any date or deadline set forth in this Settlement Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

10.12. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

10.13. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Settlement. This Settlement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

10.14. Modification. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

10.15. Notice. All notices, demands or other communications between the Parties in connection with this Settlement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Kingsley & Kingsley, APC
Eric B. Kingsley
eric@kingsleykingsley.com
Kelsey M. Szamet
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436

To Defendants:

Terence L. Greene
tgreene@delmoregreene.com
Ross M. Poole
rpoole@delmoregreene.com
Sally Butterworth
sbutterworth@delmoregreene.com
DELMORE GREENE
One America Plaza
600 West Broadway, Suite 400
San Diego, CA 92101

10.16. Stay of Litigation. Upon full execution of this Settlement Agreement, the Parties agree that based upon Code of Civil Procedure §583.310 (“the 5 year rule”), the Lawsuit shall be stayed in its entirety except for the submission of documents needed to obtain approval of the PAGA Penalty Allocation Amount provided for in this Settlement. Should the Court fail to grant approval of this Settlement, the stay will be lifted five (5) days thereafter and the Parties will be restored to their positions prior to the Settlement and the Settlement shall be null and void.

10.17. Execution in Counterparts. This Settlement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each

counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties. The counterparts may be transmitted and executed electronically (i.e., DocuSign, PDF, etc.), by facsimile, or email for which purposes of this Settlement shall be accepted as an original.

10.18. This settlement contains the entire agreement between the parties relating to the settlement of the Released Claims and plaintiff's released claims, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

10.19. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

10.20. As explained in paragraph 9, the Parties agree that upon entry of a Final Approval Order by the Court, this Settlement shall be enforceable by the Court, and the Court shall retain exclusive and continuing equity jurisdiction pursuant to California Code of Civil Procedure §664.6 of this action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions, and obligations set forth in this Settlement. The Parties agree that if any immaterial provision of this Settlement is determined to be invalid, the invalid portion shall be deemed severed and the remaining Settlement deemed enforceable.

10.21. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, a Party shall provide written notice to the other Party and allow an opportunity to cure the alleged deficiencies, and Plaintiff and Defendants agree to seek the help of the mediator to resolve any dispute they are unable to resolve informally. During this period, the Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any legal action or other proceeding instituted

by any person or entity other than Plaintiff or Defendants.

**I HAVE READ THE FOREGOING PAGA SETTLEMENT AND RELEASE. I
ACCEPT AND AGREE TO THE PROVISIONS IT CONTAINS, AND HEREBY
EXECUTE IT VOLUNTARILY WITH FULL UNDERSTANDING OF ITS
CONSEQUENCES AS OF THE DATE(S) SHOWN BELOW:**

S T MOLL, INC. DBA INTEGRITY TIRE;; RITCHIE ROBINSON
CHRIS MOLL; STEVE MOLL; TINA
MOLL

By: _____
[Signatory for]
S T MOLL, INC. DBA INTEGRITY TIRE, a
corporation;; CHRIS MOLL, an individual;
STEVE MOLL, an individual; TINA MOLL,
an individual

By: _____
Ritchie Robinson

Dated

Dated

Approved as to Form and Content:

DELMORE GREENE
Counsel for Defendants

KINGSLEY & KINGSLEY, APC
Counsel for Plaintiff and all Aggrieved
Employees

Terence L. Greene, Esq.
Ross M. Poole, Esq.

Eric B. Kingsley, Esq.
Kelsey M. Szamet, Esq.

Dated

Dated

by any person or entity other than Plaintiff or Defendants.

**I HAVE READ THE FOREGOING PAGA SETTLEMENT AND RELEASE. I
ACCEPT AND AGREE TO THE PROVISIONS IT CONTAINS, AND HEREBY
EXECUTE IT VOLUNTARILY WITH FULL UNDERSTANDING OF ITS
CONSEQUENCES AS OF THE DATE(S) SHOWN BELOW:**

S T MOLL, INC. DBA INTEGRITY TIRE;; RITCHIE ROBINSON
CHRIS MOLL; STEVE MOLL; TINA
MOLL

By:  _____

[Signatory for]

S T MOLL, INC. DBA INTEGRITY TIRE, a
corporation;; CHRIS MOLL, an individual;
STEVE MOLL, an individual; TINA MOLL,
an individual

By: _____
Ritchie Robinson

12-9-2022

Dated

Dated

Approved as to Form and Content:

DELMORE GREENE
Counsel for Defendants



Terence L. Greene, Esq.
Ross M. Poole, Esq.

KINGSLEY & KINGSLEY, APC
Counsel for Plaintiff and all Aggrieved
Employees

Eric B. Kingsley, Esq.
Kelsey M. Szamet, Esq.

12-9-2022

Dated

Dated

by any person or entity other than Plaintiff or Defendants.

**I HAVE READ THE FOREGOING PAGA SETTLEMENT AND RELEASE. I
ACCEPT AND AGREE TO THE PROVISIONS IT CONTAINS, AND HEREBY
EXECUTE IT VOLUNTARILY WITH FULL UNDERSTANDING OF ITS
CONSEQUENCES AS OF THE DATE(S) SHOWN BELOW:**

S T MOLL, INC. DBA INTEGRITY TIRE;; RITCHIE ROBINSON
CHRIS MOLL; STEVE MOLL; TINA
MOLL

By: _____
[Signatory for]
S T MOLL, INC. DBA INTEGRITY TIRE, a
corporation;; CHRIS MOLL, an individual;
STEVE MOLL, an individual; TINA MOLL,
an individual

DocuSigned by:
By: 
Ritchie Robinson
F160FAB81525462

Dated

December 2, 2022

Dated

Approved as to Form and Content:

DELMORE GREENE
Counsel for Defendants

KINGSLEY & KINGSLEY, APC
Counsel for Plaintiff and all Aggrieved
Employees

Terence L. Greene, Esq.
Ross M. Poole, Esq.



Eric B. Kingsley, Esq.
Kelsey M. Szamet, Esq.

Dated

December 5, 2022

Dated

EXHIBIT “A”

[Mailing Date]

NOTICE OF SETTLEMENT

Re: *RITCHIE ROBINSON, an individual on behalf of the State of California, as a private attorney general, Plaintiff v. S T MOLL, INC. DBA INTEGRITY TIRE, a corporation; BIG BRAND TIRE COMPANY, INC., a corporation; CHRIS MOLL, an individual; STEVE MOLL, an individual; TINA MOLL, an individual; and Does 1 thru 50, inclusive, Defendants*, San Bernardino County Superior Court, Case No. CIVSB2129140 filed on October 12, 2021.

[Settlement Administrator's info]

Dear S T MOLL, INC. DBA INTEGRITY TIRE Employee:

A settlement was reached between Plaintiff RITCHIE ROBINSON and Defendants S T MOLL, INC. DBA INTEGRITY TIRE, a corporation; BIG BRAND TIRE COMPANY, INC., a corporation; CHRIS MOLL, an individual; STEVE MOLL, an individual; and TINA MOLL, an individual (collectively, the "Defendants"), in San Bernardino County Superior Court, Case No. CIVSB2129140 (the "Lawsuit"). You are receiving this Notice because you are in the group of employees referred to as "Aggrieved Employees," which is further defined below.

DESCRIPTION OF THE LAWSUIT

The claim alleged by Plaintiff in the Lawsuit against Defendants is pursuant to the Private Attorneys General Act of 2004 ("PAGA") for an alleged failure to pay all wages/overtime, provide proper meal and rest breaks, reimburse business-related expenses, and pay all wages owed at the time of termination or resignation to employees that comply with California law. Defendants denied and continue to deny these allegations and deny any wrongdoing of any kind associated with these allegations, maintain that they were in compliance with the California Labor Code at all times, and enter into this Settlement with no admission of liability and solely for the purposes of compromising and settling the action to avoid the cost and operational burden of continued litigation.

The Court has not made a determination about Plaintiff's claims. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claims.

SETTLEMENT TERMS

On **XX**, the Parties filed a stipulation with the Court asking the Court to approve a settlement in the amount of \$400,000.00. The Court issued an Order approving the Settlement on **XX**. A summary of the terms of the Settlement include:

The Maximum Settlement Amount is \$400,000.00. From that amount, the Court has approved attorneys' fees to Plaintiff's counsel in the amount of **XX**, reimbursement of costs to Plaintiff's counsel in the amount of **XX**, and administrative expenses in the amount of **XX**. After these deductions, the remaining **\$231,666.67** is allocated as PAGA Penalty Allocation Amount. The law requires that 75% of the PAGA Penalty Allocation

Amount is allocated to the State of California and 25% is allocated to the eligible employees (described below). Therefore, the State of California will receive \$173,750.00 (75% of the penalties) and the eligible employees will each receive a pro rata share of the remaining \$57,916.67 (25% of the penalties). Each eligible employee shall receive his/her pro rata share of the remaining amount based on the number of work weeks worked for S T Moll, Inc. between August 8, 2020 and October 18, 2021 (“Eligible Work Weeks”).

The employees eligible to receive a payment under this Settlement are defined as: All persons who are employed or have been employed as an hourly employee by S T Moll, Inc. dba Integrity Tire, in the State of California who worked at any point from August 8, 2020 to October 18, 2021 (“Release Period”) (“Aggrieved Employees” or individually “Aggrieved Employee.”).

RELEASE OF LIABILITY

As part of this Settlement, you and the other Aggrieved Employee have, for the period between August 8, 2020 through October 18, 2021, been deemed to have, and by operation of the Order of Final Approval in the Lawsuit, have, expressly and irrevocably fully released and forever discharged Defendants and their past or present officers, directors, members, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers, and any other individuals or entities that could be alleged to be jointly liable with Defendants (the foregoing are collectively referred to hereafter as the “Releasees”) from any and all claims, demands, rights, liabilities, and/or causes of action pursuant to Labor Code Section 2699, *et seq.*, based upon alleged underlying violation of Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 558, 558.1, 1194, 1194.2, 1199, and 2802, as well as any related or derivative claims, as against the Releasees during the Release Period. (“Released Claims”.) Nothing in the Released Claims is intended to release anything other than the claims for penalties under PAGA for violations of the foregoing provisions of the California Labor Code and applicable Wage Order(s).

PAYMENT

The enclosed check represents your pro-rata share of the penalties from the settlement. Your check is valid for 90 days from the date of issuance. Funds attributable to any uncashed checks will be sent to the State of California Controller’s Unclaimed Property Fund in the name of the Aggrieved Employee who did not cash the check within 90 days. You will be issued an IRS Forms 1099 reflecting the payment.

If you have any questions concerning this Settlement, please contact [ILYM GROUP, INC.] at XXXX.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

EXHIBIT “B”

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
SHANNEN T. GARRETT, Esq. (SBN 316248)
shannen@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
(818) 990-8300, Fax (818) 990-2903

Attorneys for Plaintiff and all aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

RITCHIE ROBINSON, an individual, on
behalf of the State of California, as a private
attorney general,

PLAINTIFF,

v.

S T MOLL, INC. DBA INTEGRITY TIRE, a
corporation; BIG BRAND TIRE COMPANY,
INC., a corporation; CHRIS MOLL, an
individual; STEVE MOLL, an individual;
TINA MOLL, an individual; and DOES 1 thru
50, inclusive,

DEFENDANTS.

CASE NO. CIVSB2129140

[Case Assigned for All Purposes to Hon. David
Cohn in Dept. S-26]

**[PROPOSED] ORDER GRANTING
APPROVAL OF REPRESENTATIVE
ACTION SETTLEMENT AND JUDGMENT**

Date: XX
Time: XX
Dept.: S-26

Complaint Filed: October 12, 2021
FAC Filed: December 21, 2021
Trial Date: None Set

1 **[PROPOSED] ORDER**

2 Pursuant to the joint PAGA Settlement and Release agreement submitted by Plaintiff
3 RITCHIE ROBINSON (“Plaintiff”), on behalf of himself and the people of the State of California
4 and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004,
5 §2699, *et seq.* (“PAGA”) and Defendants S T MOLL, INC. DBA INTEGRITY TIRE, a
6 corporation; BIG BRAND TIRE COMPANY, INC., a corporation; CHRIS MOLL, an individual;
7 STEVE MOLL, an individual; and, TINA MOLL, an individual (collectively, “Defendants”)
8 (collectively “the Parties”) and good cause appearing:

9 Having considered the Parties’ Joint Stipulation, and all legal authorities and documents
10 submitted in support thereof, including the PAGA Settlement and Release agreement
11 (“Settlement Agreement” or “Settlement”), and good cause appearing, IT IS HEREBY
12 ORDERED, ADJUDGED, and DECREED that the Parties’ request is GRANTED, subject to the
13 following findings and orders:

- 14 1) The Court, for purposes of this Judgment and Order ("Judgment"), refers to all
15 defined terms (i.e., terms with initial capitalization) as set forth in the Settlement
16 Agreement.
- 17 2) The Court finds the Settlement is fair, reasonable, and adequate. The terms of the
18 Settlement Agreement are hereby approved.
- 19 3) The releases and waivers set forth in the Settlement Agreement for Aggrieved
20 Employees are approved as stated in the Settlement Agreement. By this Order,
21 each Aggrieved Employee shall be deemed to have, and by operation of the Order
22 shall have, fully, finally, and forever released, relinquished, and discharged all
23 Released Claims, as defined in the Settlement Agreement.
- 24 4) The Settlement Agreement and this Order are bonding on and have res judicata
25 preclusive effect in all pending and future lawsuits or other proceedings that
26 encompass the Released Claims and that are maintained by or on behalf of any
27 Aggrieved Employee and/or his/her spouse, heirs, assigns, successors,
28 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators,

guardians, personal representatives, and assigns, regardless of whether the Aggrieved Employee previously initiated or subsequently initiates litigation or other proceedings encompassed by the Released Claims, and even if such Aggrieved Employee never received actual notice of the Action or the Settlement.

5) Neither the Settlement Agreement nor the Settlement terms contained therein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the Settlement: (i) is or may be deemed to be or may be used by any Aggrieved Employee as an admission of, or evidence of, the validity of any of the Released Claims, or of any wrongdoing or liability of Defendants or any of the other Released Parties; or (ii) is or may be deemed to be or may be used by any Aggrieved Employee as an admission of, or evidence of, any fault or omission of Defendant or any of the other Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Defendants or any of the other Released Parties may file the Settlement Agreement and/or the Judgment from this Action in any other action that may be brought against it or them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

6) The Proposed Notice of Settlement complies with due process and is approved.

7) The Court approves the Maximum Settlement Amount¹ of \$400,000.00.

8) The Court approved the PAGA Penalty Allocation Amount in the amount of \$231,666.67.

9) The Court approves 75% of the PAGA Penalty Allocation Amount be allocated to the LWDA in the amount of \$173,750.00 and 25% to the Aggrieved Employees in the amount of \$57,916.67.

¹ Unless otherwise defined herein, all capitalized terms shall have the meaning assigned to them in the Settlement.

1 10) The Court approves PAGA Counsel's request for attorneys' fees in the amount of
2 \$133,333.33.

3 11) The Court approves PAGA Counsel's request for reimbursement of litigation
4 costs in the amount of \$10,000.00.

5 12) The Court approved the Service Enhancement of \$5,000.

6 13) The Court approves ILYM Group, Inc. as the Court-appointed Settlement
7 Administrator. ILYM Group, Inc. shall be paid pursuant to the Agreement for the
8 services it provides in administering the Settlement, and the Court approves the
9 settlement administration costs of \$10,000.00. The Parties are to bear their own
10 costs, except as otherwise provided in the Settlement Agreement.

11 14) The Parties are ordered to carry out the terms of the Settlement.

12 15) Pursuant to C.C.P. §664.6, the Court shall have and retain continuing jurisdiction
13 over this action and the Parties and the Aggrieved Employees, including after the
14 entry of this Order, to the fullest extent necessary to interpret, enforce and
15 effectuate the terms and intent of the Settlement Agreement and this Order.

16 16) This document shall constitute a Judgment.

17
18 **IT IS SO ORDERED.**

19
20 DATED: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT "2"

S T Moll, Inc. (dba Integrity Tire) adv. Robinson, Ritchie

Historic Cost

\$6,223.23

Postage Cost

\$5.80

Created: 12/2/2022 at 4:36 PM

Trialworks TaskCode

Postage Cost

Payee

DocuSign

Date Incurred

12/2/2022

Court Cost

\$94.00

Created: 9/26/2022 at 11:51 AM

Trialworks TaskCode

costs

Description

Courtcall

Date Incurred

9/7/2022

Notes

HD: 9/6/22

Payee

Courtcall

Filing Fee

\$117.36

Created: 9/27/2022 at 1:39 PM

Trialworks TaskCode

...

Date Incurred

...

12/13/22, 2:08 PM

Filevine - S T Moll, Inc. (dba Integrity Tire) adv. Robinson, Ritchie

tiling tee	8/31/2022
Payee One Legal	Docs  OLINV#04338114 ST Moll 8.31.22.pdf
Description OLINV#04338114 ST Moll 8.31.22	

Postage Cost	\$5.80
<i>Created: 6/6/2022 at 9:06 AM</i>	
Trialworks TaskCode Postage Cost	Payee DocuSign
Date Incurred 6/6/2022	Description VOIDED

Postage Cost	\$5.80
<i>Created: 6/3/2022 at 12:23 PM</i>	
Trialworks TaskCode Postage Cost	Payee DocuSign
Date Incurred 6/3/2022	

Postage Cost	\$5.80
<i>Created: 3/25/2022 at 12:42 PM</i>	
Trialworks TaskCode Postage Cost	Payee DocuSign

Date Incurred

3/25/2022

Mediation Cost

\$3,400.00*Created: 3/21/2022 at 10:18 AM***Trialworks TaskCode**

costs

Date Incurred

3/18/2022

Payee

Barry Winograd Arbitrator & Mediator

Description22-120.Robinson-ST Moll.Deposit.Invoice.3-18-22
paid**Docs** 22-120.Robinson-ST Moll.Deposit.Invoice.3-18-22 paid.pdf

Filing Fee

\$112.47*Created: 3/11/2022 at 3:51 PM***Trialworks TaskCode**

filing fee

Date Incurred

3/5/2022

Payee

One Legal

Description

OLINV#03904157 STM 3.5.22

Docs OLINV#03904157 STM 3.5.22.pdf

Court Cost

\$94.00*Created: 3/21/2022 at 1:03 PM***Trialworks TaskCode**

costs

Date Incurred

3/4/2022

Description

Courtcall

Notes

HD: 3/3/22

Payee Courtcall	
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Filing Fee		\$114.53
<i>Created: 3/10/2022 at 12:39 PM</i>		
Trialworks TaskCode filing fee	Payee One Legal	
Date Incurred 2/23/2022	Description OLINV#03878460 STM 2.23.22	

(Proof of Submission to LWDA)

EXHIBIT "3"

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On December 13, 2022, I served all interested parties in this action the following documents described as: **DECLARATION OF KELSEY M. SZAMET IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF REPRESENTATIVE ACTION SETTLEMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Terence Greene
Ross Poole
tgroene@DelmoreGreene.com
rpoole@DelmoreGreene.com
DELMORE GREENE
One America Plaza
600 West Broadway, Suite 400
San Diego, CA 92101

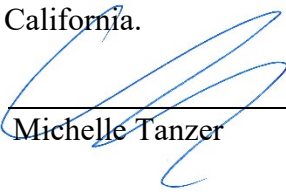
☐ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **BY ELECTRONIC SERVICE:** I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

☒ **BY ELECTRONIC MAIL TRANSMISSION:** I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 13, 2022, at Encino, California.



Michelle Tanzer